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No. 08F-BD059-SBD

CONSENT ORDER

Respondent.

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1 d. Failed to maintain an adequate internal control structure; specifically:

2 i. An examination of the following escrow files, set forth below, revealed that
3 Respondent for twenty-two (22) files located at Branch #47, Raintree and for
4 thirteen (13) files located at Branch #31, Colter:

- 5 1. Failed to account properly for escrow property as required by the
6 terms of the escrow;
- 7 2. Failed to disburse funds in accordance with the provisions of the
8 HUD-1 escrow;
- 9 3. Failed to maintain an adequate internal control structure;
- 10 4. Failed to follow written escrow instructions;
- 11 5. Disbursed uncollected funds prematurely;
- 12 6. Failed to deposit escrow monies immediately upon receipt, or as soon
13 thereafter as is reasonably practicable; and
- 14 7. Failed to file suspicious activity reports with the Attorney General's
15 Office;
- 16 8. Disbursed \$1,335,190.39 (One million, three hundred thirty five
17 thousand, one hundred ninety dollars and thirty nine cents) contrary to
18 the provisions of HUD-1 escrow statements or written escrow
19 instructions.

19 e. Failed to properly label three (3) fiduciary checking accounts; specifically:

- 20 i. Two (2) Account Servicing bank accounts containing Arizona escrow
21 transactions and balances were not adequately labeled as trust, escrow or any
22 other fiduciary label to indicate that the funds were fiduciary funds of the
23 escrow agent;
- 24 ii. One (1) Default Servicing bank account containing Arizona escrow
25 transactions and balances was not adequately labeled as trust, escrow or any
26 other fiduciary label to indicate that the funds were fiduciary funds of the

- 1 escrow agent; and
- 2 iii. Respondent failed to correct this violation from the previous examination;
- 3 f. Failed to maintain a separate escrow trust bank account; specifically:
- 4 i. Security Title has eight (8) escrow trust accounts at Chase Bank, and
- 5 subsequently opened eight (8) escrow accounts (analyzed checking accounts)
- 6 at Bank of America. Funds of three to five million dollars (\$3,000,000.00 –
- 7 5,000,000.00) have been withdrawn from Respondent's escrow trust accounts
- 8 at Chase Bank and deposited into the Bank of America analyzed checking
- 9 accounts. As the balances in the Chase Bank escrow trust accounts decrease,
- 10 money is withdrawn from the Bank of America analyzed checking accounts
- 11 and transferred back into the Chase Bank accounts;
- 12 ii. The practice described above has resulted in a violation of the Good Funds
- 13 Law. Respondent failed to maintain appropriate balances in each account to
- 14 cover the outstanding checks and outgoing wires.
- 15 g. Failed to provide adequate follow-up on eleven thousand, eight hundred two (11,802)
- 16 stale-dated outstanding checks totaling \$2,573,734.48;
- 17 i. Respondent failed to correct this violation from the previous examination;
- 18 h. Failed to maintain a positive escrow balance; specifically:
- 19 i. The Account Servicing Department had a NSF item for \$656.02 that occurred
- 20 on July 28, 2006 and was not covered until August 4, 2006;
- 21 i. Failed to keep passwords confidential; specifically:
- 22 i. The staff at Sun City Branch #80 knows each other's passwords. When
- 23 logging onto the computer, the system recognizes the person by the password
- 24 used and not by the person actually logging on. The employees have the
- 25 ability to log-on as someone else. This provides branch employees with the
- 26 ability to remove, misappropriate or misdirect escrow funds without timely
- detection; and

- 1 ii. Respondent failed to correct this violation from the previous examination;
- 2 j. Failed to record all escrow deposits in a timely manner; specifically:
- 3 i. Included in Escrow file #47-3464 is a copy of an incoming wire form,
- 4 #1052665 for \$10,000.00 dated 12-5-05. It does not show as an incoming
- 5 wire or any type of receipt on the Receipts and Disbursements log and the
- 6 Accounting Department could not locate or confirm that the wire was ever
- 7 received or recorded; and
- 8 ii. Included in Escrow file #47-4527 is Escrow Receipt #644222, dated 11-16-06
- 9 and documenting \$2,000.00 Chase Bank N.A. official check earnest money
- 10 deposit of the buyer, Deborah Bredenberg. The Receipts and Disbursements
- 11 Ledger, created, maintained and under the sole control of Escrow Officer
- 12 Chris Bartlemus, indicated the posting date of this check was 11-28-06,
- 13 twelve (12) days after the true receipt of the funds. The Escrow Receipt was
- 14 also shown as posted to Security Title's official escrow accounting receipts
- 15 and disbursement system ledger on 11-28-06;
- 16 k. Failed to provide adequate follow-up on outstanding escrow balances aged in excess
- 17 of six (6) months;
- 18 i. Respondent failed to correct this violation from the previous examination;
- 19 l. Failed to properly account for escrow property by failing to escheat outstanding
- 20 escrow accounts more than five (5) years old; specifically:
- 21 i. Four (4) escrow files totaling \$1,295.00 which should have been escheated in
- 22 November 2005 were cleared at the end of August, 2006;
- 23 m. Failed to provide supporting documentation for Express Mail/Courier fees;
- 24 specifically:
- 25 i. The Main Branch failed to provide supporting documentation for two (2) files;
- 26 ii. The Tatum and Greenway Branch failed to provide supporting documentation
- for two (2) files;

- 1 iii. The Chandler Branch failed to provide supporting documentation for three (3)
2 files;
- 3 iv. The Wickenburg Branch failed to provide supporting documentation for three
4 (3) files; and
- 5 v. The Sun City Branch failed to provide supporting documentation for five (5)
6 files;
- 7 n. In certain limited files, failed to provide each depositing buyer or seller, within three
8 (3) business days after receipt of deposited monies, adequate notice of their right to earn interest on
9 all monies deposited into the escrow;
- 10 o. Failed to perform a routine inventory on unused checks;
- 11 p. In certain limited files, failed to disclose to the buyers and sellers of residential
12 dwellings that the title insurance underwriter may offer a closing protection letter that provides
13 protection for loss of escrow monies due to fraud or dishonesty of the escrow agent;
- 14 q. In certain limited files, failed to disclose to the buyers and sellers of residential
15 dwellings, not later than three (3) business days after receipt of any funds, that monies deposited into
16 an escrow account are not insured against loss from fraud or theft, by this State or the United States
17 Government;
- 18 r. Disbursed funds that were not available for withdrawal from the escrow account;
- 19 s. Failed to charge parties to numerous escrow files the exact third-party pass-through
20 costs; specifically:
- 21 i. Respondent made undercharges totaling \$350.56; and
- 22 ii. Respondent made overcharges totaling \$48.64;
- 23 t. Deviated numerous times from their filed and approved escrow rates in an amount
24 totaling \$15,000.00; specifically:
- 25 i. The Main Branch #15 deviated from the filed and approved rates;
- 26 ii. The Park Place Branch #26 deviated from the filed and approved rates;
- iii. The Colter Branch #31 deviated from the filed and approved rates;

- 1 iv. The Tatum and Greenway Branch #32 deviated from the filed and approved
2 rates;
- 3 v. The Scottsdale Forum Branch #44 deviated from the filed and approved rates;
- 4 vi. The Chandler Branch #46 deviated from the filed and approved rates;
- 5 vii. The Fiesta Branch #65 deviated from the filed and approved rates;
- 6 viii. The Palm Valley Branch #85 deviated from the filed and approved rates;
- 7 ix. The Sun City Branch #80 deviated from the filed and approved rates;
- 8 x. The Wickenburg Branch #98 deviated from the filed and approved rates; and
- 9 xi. The Account Servicing Branch made one (1) undercharge totaling \$15.00;
- 10 u. Failed to document the escrow recorded date in escrow files; specifically:
- 11 i. Five branches failed to document the escrow recorded date in a total of
- 12 eighteen (18) escrow files; specifically:
- 13 1. The Park Place Branch #26 failed to document the escrow recorded
- 14 date in one (1) escrow file;
- 15 2. The Colter Branch #31 failed to document the escrow recorded date in
- 16 six (6) escrow files;
- 17 3. The Chandler Branch #46 failed to document the escrow recorded date
- 18 in six (6) files;
- 19 4. The Sun City Branch #80 failed to document the escrow recorded date
- 20 in one (1) file; and
- 21 5. The Wickenburg Branch #98 failed to document the escrow recorded
- 22 date in four (4) files; and
- 23 ii. Respondent failed to correct this violation from the previous examination;
- 24 v. Failed to maintain detailed escrow fee calculation worksheets in sufficient detail, in
- 25 the escrow files, to document each escrow officer's calculation of escrow fees;
- 26 w. Failed to maintain detailed Email docs charges in sufficient detail in the escrow files,
- to document each escrow officer's Email doc fees;

1 x. Failed to record one (1) Trustee's Deed in the county in which the trust property is
2 located within fifteen (15) business days after the date of sale; specifically:

3 i. The Trustee's sale for Account 14-49473 was 7-20-06, but the Trustee's Deed
4 was not recorded until 8-17-06; and

5 y. Failed to maintain certain internal control procedures to ensure that persons employed
6 by or associated with Respondent's business do not make significant errors or perpetuate significant
7 irregularities or fraud without timely detection; specifically:

8 i. All branches visited had different interpretations of the filed rates;

9 ii. In certain limited circumstances, the internal procedures for outstanding
10 checks and escrow items greater than six months old were not followed; and

11 iii. Respondent has internal procedures posted on its website; however, there
12 seems to be some confusion at the branch level, as some branches are not
13 aware of these procedures and others did not know where to retrieve the
14 procedures.

15 4. The Department has found no evidence that Respondent's violations were willful or
16 intentional.

17 5. These Findings of Fact shall also serve as Conclusions of Law.

18 CONCLUSIONS OF LAW

19 1. Pursuant to A.R.S. § 6-801, *et seq.*, the Superintendent has the authority and duty to regulate
20 all persons engaged in the escrow agent business and with the enforcement of statutes, rules, and
21 regulations relating to escrow agents.

22 2. By the conduct set forth above, Security Title Agency violated the following:

23 a. A.R.S. §§ 6-837(B) and 6-123(3) by failing to produce at least one exam file;

24 b. A.R.S. §§ 6-837(B) and 6-841(B) by failure to maintain adequate escrow file
25 documentation;

26 c. A.R.S. §§ 6-841, 6-834(A), and 6-841.01 by failing to properly account for escrow
property by improper disbursement of escrow funds;

- 1 d. A.R.S. § 6-841 by failure to maintain an adequate internal control structure;
2 specifically:
- 3 1. A.R.S. § 6-834(A) by failing to properly account for escrow property as
4 required by the terms of the escrow;
 - 5 2. A.R.S. § 6-834(A), and A.R.S. § 6-841 by failure to disburse funds in
6 accordance with the provisions of the HUD-1 escrow;
 - 7 3. A.R.S. § 6-841 by failing to adopt a systematic internal control structure;
 - 8 4. A.R.S. § 6-834(A) and A.R.S. § 6-841 by failing to follow written escrow
9 instructions;
 - 10 5. A.R.S. § 6-843 by disbursing uncollected funds prematurely;
 - 11 6. A.R.S. § 6-834(A) by failing to deposit escrow monies immediately upon
12 receipt, or as soon thereafter as is reasonably practicable; and
 - 13 7. A.R.S. § 6-1241(A) by failure to file suspicious activity reports with the
14 Attorney General' office.
- 15 e. A.R.S. §§ 6-834(A), 6-843, 6-841(A), and 6-841(B), and A.A.C. R20-4-702 and
16 A.A.C. R20-4-704, by failing to properly label three (3) fiduciary checking accounts;
- 17 f. A.R.S. §§ 6-834(A), 6-843, 6-841(A), and 6-841(B), and A.A.C. R20-4-702 and
18 A.A.C. R20-4-704, by failing to maintain a separate escrow trust bank account;
- 19 g. A.R.S. §§ 6-834(A), 6-843, 6-841(A), and 6-841(B), and A.A.C. R20-4-702 and
20 A.A.C. R20-4-704, by failing to provide adequate follow-up on stale-dated
21 outstanding checks;
- 22 h. A.R.S. §§ 6-834(A), 6-843, 6-841(A), and 6-841(B), and A.A.C. R20-4-702 and
23 A.A.C. R20-4-704, by failing to maintain a positive escrow balance;
- 24 i. A.R.S. §§ 6-834(A), 6-843, 6-841(A), and 6-841(B), and A.A.C. R20-4-702 and
25 A.A.C. R20-4-704, by failing to keep passwords confidential;
- 26 j. A.R.S. §§ 6-834(A), 6-843, 6-841(A), and 6-841(B), and A.A.C. R20-4-702 and
A.A.C. R20-4-704, by failing to record all escrow deposits in a timely manner;

- k. A.R.S. §§ 6-834(A) and 6-841 and A.A.C R20-4-704, by failing to provide adequate follow up on outstanding escrow balances aged in excess of six (6) months;
- l. A.R.S. §§ 6-834(A), 6-841 and 44-302, by failing to properly account for escrow property by failing to escheat outstanding escrow accounts more than five (5) years old;
- m. A.R.S. § 6-841(B) and A.A.C. R20-4-702, by failing to provide supporting documentation for Express Mail/Courier fees;
- n. A.R.S. § 6-834(D) and A.A.C. R20-4-702, by failing in certain limited files to provide each depositing buyer or seller, within three (3) business days after receipt of deposited monies, adequate notice of their right to earn interest on all monies deposited into the escrow;
- o. A.R.S. §§ 6-817(A)(12), 6-841(A) and 6-841(B), by failing to perform a routine inventory on unused checks;
- p. A.R.S. § 6-841.02(A), by failing in certain limited files to disclose to the buyers and sellers of residential dwellings that the title insurance underwriter may offer a closing protection letter that provides protection for loss of escrow monies due to fraud or dishonesty of the escrow agent;
- q. A.R.S. § 6-841.03, by failing in certain limited files to disclose to the buyers and sellers of residential dwellings, not later than three (3) business days after receipt of any funds, that monies deposited into an escrow account are not insured against loss from fraud or theft, by this State or the United States Government;
- r. A.R.S. §§ 6-843(A) and 6-843(B), by disbursing funds that were not available for withdrawal from the escrow account;
- s. A.R.S. § 6-846.01(A), by failing to charge parties to numerous escrow files the exact third-party pass-through costs;
- t. A.R.S. § 6-846.04(A), by deviating numerous times from their filed and approved escrow rates in an amount totaling \$15,000.00;

- 1 u. A.R.S. § 6-831 and A.A.C. R20-4-702, by failing to document the escrow recorded
- 2 date in escrow files;
- 3 v. A.R.S. § 6-831 and A.A.C. R20-4-702, by failing to maintain detailed escrow fee
- 4 calculation worksheets in sufficient detail, in the escrow files, to document each
- 5 escrow officer's calculation of escrow fees;
- 6 w. A.R.S. § 6-831 and A.A.C. R20-4-702, by failing to maintain detailed Email docs
- 7 charges in sufficient detail in the escrow files, to document each escrow officer's
- 8 Email doc fees;
- 9 x. A.R.S. § 33-810(A), by failing to record one (1) Trustee's Deed in the county in
- 10 which the trust property is located within fifteen (15) business days after the date of
- 11 sale; and
- 12 y. A.R.S. §§ 6-817(A)(12) and 6-841(B), by failing in certain limited files to maintain
- 13 certain internal control procedures to ensure that persons employed by or associated
- 14 with Respondent's business do not make significant errors or perpetuate significant
- 15 irregularities or fraud without timely detection.

16 3. Respondent has not conducted business in accordance with the law and violated Title 6,
17 Chapter 7 and the rules relating to this chapter, which are grounds for license suspension or
18 revocation pursuant to A.R.S. § 6-817(A)(2).

19 4. Respondent failed to account properly for escrow property, which is grounds for license
20 suspension or revocation pursuant to A.R.S. § 6-817(A)(7).

21 5. Respondent failed within a reasonable time to produce at least four (4) exam files from
22 different branch locations and failed to maintain adequate escrow file documentation, which is
23 grounds for license suspension or revocation pursuant to A.R.S. § 6-817(A)(8).

24 6. Respondent disbursed monies in violation of escrow instructions, which is grounds for
25 license suspension or revocation pursuant to A.R.S. § 6-817(A)(11).

26 7. Respondent has failed to maintain an adequate internal control structure, which is grounds for
license suspension or revocation pursuant to A.R.S. § 6-817(A)(12).

1 8. The violations of applicable laws, set forth above, constitute grounds for: (1) the issuance of
2 an order pursuant to A.R.S. § 6-137 directing Respondent to cease and desist from the violative
3 conduct and to take the appropriate affirmative actions, within a reasonable period of time prescribed
4 by the Superintendent, to correct the conditions resulting from the unlawful acts, practices, and
5 transactions; (2) the imposition of a civil monetary penalty pursuant to A.R.S. § 6-132; (3) the
6 suspension or revocation of Respondent's license pursuant to A.R.S. § 6-817; and (4) an order or any
7 other remedy necessary or proper for the enforcement of statutes and rules regulating escrow agents
8 pursuant to A.R.S. §§ 6-123 and 6-131.

9 **ORDER**

10 1. Security Title shall immediately stop the violations set forth in the Findings of Fact and
11 Conclusions of Law. Security Title:

- 12 a. Shall promptly produce escrow files upon request;
- 13 b. Shall maintain all escrow records for at least three years after final disbursement of
14 funds;
- 15 c. Shall adopt a systematic internal control structure and shall properly account for all
16 escrow property;
- 17 d. Shall obtain and maintain adequate escrow file documentation and shall properly
18 account for escrow property by properly disbursing escrow funds;
- 19 e. Shall adopt a systematic internal control structure to ensure that persons employed by
20 or associated with the escrow agent's business do not make significant errors or
21 perpetuate significant irregularities or fraud without timely detection;
- 22 f. Shall adopt a systematic internal control structure to ensure that written escrow
23 instructions are appropriately complied with;
- 24 g. Shall adopt a systematic internal control structure to ensure that uncollected funds are
25 not disbursed prematurely;

26 ...

- h. Shall adopt a systematic internal control structure to ensure that escrow monies are deposited immediately upon receipt, or as soon thereafter as is reasonably practicable;
- i. Shall file suspicious activity reports with the Attorney General's office;
- j. Shall properly label fiduciary checking accounts;
- k. Shall maintain a separate escrow trust bank account;
- l. Shall provide adequate follow-up on stale-dated outstanding checks;
- m. Shall maintain a positive escrow balance;
- n. Shall keep passwords confidential;
- o. Shall record all escrow transactions in a timely manner;
- p. Shall provide adequate follow-up on outstanding escrow balances aged in excess of six (6) months;
- q. Shall properly account for escrow property and escheat outstanding escrow accounts more than five (5) years old;
- r. Shall file escrow rates that do not use subjective language;
- s. Shall provide supporting documentation for Express Mail/Courier fees;
- t. Shall provide each buyer or seller, within three (3) business days after receipt of deposited monies, adequate notice of their right to earn interest on all monies deposited into the escrow;
- u. Shall perform a routine inventory on unused checks;
- v. Shall disclose to the buyers and sellers of residential dwellings that the title insurance writer may offer a closing protection letter that provides protection for loss of escrow monies due to fraud or dishonesty of the escrow agent;
- w. Shall disclose to the buyers and sellers of residential dwellings, not later than three (3) business days after receipt of any funds, that monies deposited into an escrow account are not insured against loss from fraud or theft, by this State or the United States Government;

- 1 x. Shall not disburse funds that are not available for withdrawal from the escrow
2 account;
- 3 y. Shall charge parties to escrow files the exact third-party pass-through costs;
- 4 z. Shall not deviate from the filed and approved escrow rates;
- 5 aa. Shall document the escrow recorded date in escrow files;
- 6 bb. Shall maintain detailed escrow fee calculation worksheets in sufficient detail, in the
7 escrow files, to document each escrow officer's calculation of escrow fees;
- 8 cc. Shall maintain detailed Email docs charges in sufficient detail in the escrow files, to
9 document each escrow officer's Email doc fees;
- 10 dd. Shall record Trustee's Deeds in the county in which the trust property is located
11 within fifteen (15) business days after the date of sale; and
- 12 ee. Shall maintain certain internal control procedures to ensure that persons employed by
13 or associated with Respondent's business do not make significant errors or perpetuate
14 significant irregularities or fraud without timely detection.
- 15 2. Security Title shall refund all overcharges of five dollars (\$5.00) or more to the appropriate
16 escrow parties, provide copies of the refund checks to the Superintendent, and advise the
17 Superintendent what steps Respondent has taken to prevent future overcharges and undercharges of
18 exact third-party pass-through costs and deviations. If specific proof of lack of deviation is provided
19 to the Department and if the Department agrees with the proof provided then, and in that event,
20 Security Title shall not be responsible for overcharges of five dollars (\$5.00) or more.
- 21 3. Security Title shall remit a penalty to the Superintendent in an amount equal to the total
22 deviations of **fifteen thousand dollars (\$15,000.00)**, pursuant to A.R.S. § 6-846.04(B).
- 23 4. Security Title shall immediately pay to the Department a civil money penalty in the amount
24 of **two hundred twenty five thousand dollars (\$225,000.00)**.
- 25 5. Security Title shall immediately pay to the Department an examination fee in the sum of
26 **sixty thousand dollars (\$60,000.00)**.

1 6. The provisions of this Order shall be binding upon Respondent, its employees, agents and
2 other persons participating in the conduct of the affairs of Respondent.

3 7. This Order shall become effective upon service, and shall remain effective and enforceable
4 until such time as, and except to the extent that, it shall be stayed, modified, terminated, or set aside.

5 SO ORDERED this 10 day of March, 2008.

6 Felecia A. Rotellini
7 Superintendent of Financial Institutions

8 By: Robert D. Charlton
9 Robert D. Charlton
 Assistant Superintendent of Financial Institutions

10 **CONSENT TO ENTRY OF ORDER**

11 1. Respondent acknowledges that it has been served with a copy of the foregoing Findings of
12 Fact, Conclusions of Law, and Order in the above-referenced matter, has read the same, is aware of
13 its right to an administrative hearing in this matter, and has waived the same.

14 2. Respondent admits the jurisdiction of the Superintendent and consent to the entry of the
15 foregoing Findings of Fact, Conclusions of Law, and Order.

16 3. Respondent states that no promise of any kind or nature has been made to induce it to
17 consent to the entry of this Order, and that it has done so voluntarily.

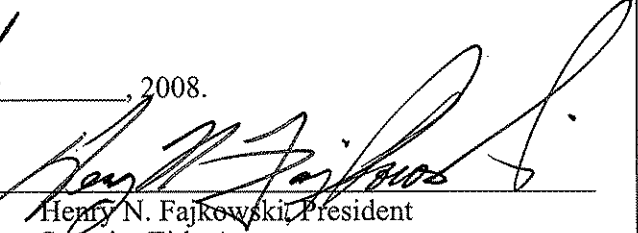
18 4. Respondent agrees to cease from engaging in the violative conduct set forth above in the
19 Findings of Fact and Conclusions of Law.

20 5. Respondent acknowledges that the acceptance of this Agreement by the Superintendent is
21 solely to settle this matter and does not preclude this Department, any other agency or officer of this
22 state or subdivision thereof from instituting other proceedings as may be appropriate now or in the
23 future.

24 6. Henry N. Fajkowski, President, on behalf of Security Title Agency, Inc., represents that he is
25 the President, and that, as such, has been authorized by Security Title Agency, Inc. to consent to the
26 entry of this Order on its behalf.

1 7. Respondent waives all rights to seek judicial review or otherwise to challenge or contest the
2 validity of this Cease and Desist Order.

3 DATED this 7th day of March, 2008.

4 By: 
5 Henry N. Fajkowski, President
6 Security Title Agency

7 ORIGINAL of the foregoing filed this 10th
8 day of March, 2008, in the office of:

9 Felecia A. Rotellini
10 Superintendent of Financial Institutions
11 Arizona Department of Financial Institutions
12 ATTN: Susan L. Longo
13 2910 N. 44th Street, Suite 310
14 Phoenix, AZ 85018

15 COPY mailed/delivered same date to:

16 Craig A. Raby, Assistant Attorney General
17 Office of the Attorney General
18 1275 West Washington
19 Phoenix, AZ 85007

20 Robert D. Charlton, Assistant Superintendent
21 Richard Carpenter, Senior Examiner
22 Peggy Prill, Senior Examiner
23 Arizona Department of Financial Institutions
24 2910 N. 44th Street, Suite 310
25 Phoenix, AZ 85018

26 AND COPY MAILED SAME DATE by
Certified Mail, Return Receipt Requested, to:

Security Title Agency, Inc.
c/o Henry N. Fajkowski, President
3636 North Central Avenue, Suite 140
Phoenix, AZ 85012

James J. Belanger, Esq.
Cheifetz Iannitelli Marcoloni, P.C.
1850 North Central Avenue, 19th Floor
Phoenix, AZ 85004
Attorneys for Respondent


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